IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.168 OF 1987

Madanlal Javanmal Jain) ..... Appellant.
(Orig. Opponent No.5)

V/s

1. Bhabutmal Hirachand Shah, 45,)
)
2. Pepibai Chunilal Jain, 75,)
3. Maganibai Kasturji Jain, 78,)
(Nos. 2 and 3 through their Power)
of attorney holder Manekchand)
Chunilal Jain))
[Name of Respondent Nos.2 & 3)
deleted as per Court's Order)
dated 19/8/02])
)
4. Shantabai Chamanlal Oswal,45,)
) ....Respondents.
5. Jatanabai Javamal Oswal) (No.1, original Petitioner,
(Died during pendency of the) Nos.2 to 5 original
application)) opponents Nos. 1 to 4)

Mr. S.M. Kazi for the appellant.

Mr. S.M. Railkar for Respondent No.1.

CORAM: V.M. KANADE, J.
DATE : 21st September, 2007

ORAL JUDGMENT:

1. I have heard the learned Counsel appearing on behalf

of the appellant and the learned Counsel appearing on behalf of Respondent No.1.

2. Appellant is the original Opponent No.5. He has challenged the judgment and order passed by District Judge, Ratnagiri dated 31/01/1987 whereby the Petition filed by Respondent No.1 for grant of Letters of Administration to administer the estate of deceased Chamanlal with a copy of the Will attached to the said Petition, was allowed.

3. Brief facts are that the Respondent No.1 filed an application under section 278 of the Indian Succession Act, alleging that he is a beneficiary of the said property of the deceased in view of the Will which was executed by him. It was stated that the said property was self acquired property of the deceased and that he had prepared a Will in respect of his movable and immovable property. The Will was dated 11/07/1973. However, it was executed in the presence of witnesses on 18/07/1973. This Will was typed by Mr. Bhaskar Ramchandra Limaye on his typewriter and the deceased Chamanlal had executed the said Will in the

presence of attesting witnesses. One of the attesting witnesses was Dr. J. S. Kelkar, Ex-President of Ratnagiri Municipal Council and it was also attested by two other well-known businessmen viz Anantsheth Redij and Babusheth Sansare. The said attesting witnesses had signed in the presence of deceased Chamanlal. Dr. Kelkar had also examined Chamanlal before the Will was executed and he had certified that Chamanlal was in a sound state of health and mind when he executed the Will and hence the Petition filed by Respondent No.1 was allowed. Chamanlal died on 02/06/1982 at Malkapur, Taluka Shahuwadi, District Kolhapur and a postmortem was carried out and panchanama was prepared and whatever articles were found on his person were handed over to the police. It is the case of the petitioner, Respondent No.1 herein, that he is one of the trustees of the Trust created by deceased Chamanlal and all the documents pertaining to the said Trust were lying in the house of deceased Chamanlal and, therefore, he made an application to seal the said house and to take inventory. Accordingly the house was sealed and inventory was taken. Initially, when the first inventory was taken, the Will was not

found. However, at the time of second inventory, the Will was found in the cupboard and, thereafter, the present Petition was filed. After presentation of the of the Petition, public notice was issued and, in response to the said public notice, several persons came forward and filed their claims. One claim was filed by Shantabai, who alleged that she was the wife of the deceased and she stated that the Will was not signed by Chamanlal. The appellant herein claimed to be the adopted son of deceased Chamanlal's deceased brother, who came and filed his Written Statement at Exhibit-70. He stated that deceased Chamanlal was lending money to the Petitioner and he had accepted the post- dated cheques from the Petitioner i.e Respondent No.1 herein. Madanlal also claimed that no Will was executed by Chamanlal. Some other persons also came forward and filed Written Statement. However, subsequently, they did not turn up. The present appeal has been filed by original Opponent No.5.

4. The learned Counsel appearing on behalf of the appellant submitted that there is inherent contradiction in

the statement of Respondent No.1 herein in respect of execution of the Will itself. He invited my attention to paras 9 and 10 of his evidence and also to para 14. He invited my attention to answer given by Respondent No.1 in his cross-examination wherein he admitted that the deceased had told him that he wanted to go home to execute the Will so that he will keep it in his cupboard. He submitted that in para 14 of his cross-examination, he has stated that on the copy of the Will which was with him, the date was shown as 11-7-1973 and that he had made noting of that date on the basis of the copy of the Will and, therefore, he stated that he had an impression that the Will was executed on 11-7-1973. The learned Counsel appearing on behalf of the appellant submitted that all these facts clearly indicate that the Will was planted by Respondent No.1 in his cupboard and, therefore, he had immediately made an application to the Chief Judicial Magistrate for making inventory of the house. He submitted that the main reason was that the Respondent No.1 having fabricated the Will and having kept it in a cupboard, had deliberately taken steps of making an application for preparing inventory. The learned Counsel

then invited my attention to the statement of Respondent No.1 who has stated that he was not aware when Chamanlal got his Will typed and that he did not go to the house of Mr. Limaye at any time with Chamanlal and that a carbon copy was handed over to him by Chamanlal which was in his custody throughout. The learned Counsel submitted that if the copy of the Will was with Respondent No.1, he should have made a reference about this Will in the application which was preferred by him for sealing the house of the deceased Chamanlal. He submitted that this itself indicated that the Will was subsequently planted by Respondent No.1 and it was fabricated subsequently. He submitted that this clearly indicated that Respondent No.1 had used signature of the deceased which was obtained on a blank paper and, thereafter, a Will was prepared and the signatures of attesting witnesses were taken.

5. It is not possible to accept the submissions made by the learned Counsel appearing on behalf of the appellant. In the first place, the appellant does not have any locus to challenge the said Will or an application for probate, since,

in view of section 278, he is not next to kin of the deceased and he being the adopted son of deceased brother of deceased Chamanlal. Even then, the Lower Court has taken into consideration his entire evidence and recorded a finding that the Will was properly executed. The Trial Court has considered each and every aspect of the case and has dispelled the objection which was raised by the present appellant. A few minor contradictions in the evidence of Respondent No.1 does not and will not have an effect of disproving the case which is made out by Respondent No.1. Hence, there is no merit in the submissions made by the learned Counsel appearing on behalf of Respondent No.1. The First Appeal is accordingly dismissed.

(V.M. KANADE, J.)